IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

Crl.MC.No. 340 of 2007()

CRMP.11992/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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PETITIONER: PETITIONER

MADHUSOODHANAN, S/O. SREEDHARAN,
ANDEZHATH HOUSE, KUTTOOR, THRISSUR.

BY ADV. SRI.P.K.SAJEEV

RESPONDENTS: RESPONDENT

STATE OF KERALA, REPRESENTED BY
CIRCLE INSPECTOR OF POLICE, THRISSUR TOWN
WEST POLICE STATION, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 340 OF 2007

Dated this the 23rd day of February, 2007

ORDER

The petitioner is the 5th accused in a prosecution, inter alia, under Sec.27 of the Arms Act and Sec.302 read with Sec.149 of the IPC.

2. The crux of the relevant allegation is that an autorikshaw has been used for transportation of the arms in question. That autorikshaw was seized. The petitioner claims to be the owner of the said autorikshaw. He applied for release of the vehicle to his custody. The prayer was rejected by the learned Magistrate holding that a heinous offence has been committed making use of the vehicle. The vehicle may be liable for confiscation under Sec.32 of the Arms Act, it was observed. It is, in these circumstances, that the impugned order was passed rejecting the prayer for release of the vehicle.

3. The learned counsel for the petitioner submits that there is no contention that the petitioner is not the owner of the vehicle. Even assuming that ultimately the vehicle may

be found liable for confiscation, there is absolutely no reason to insist that the vehicle must continue in the custody of the court exposed to sun and rain and liable for deterioration. At any rate, inasmuch as the vehicle is not required for further investigation or prosecution, direction must have been issued subject to appropriate conditions for release of the vehicle to the petitioner, submits the learned counsel.

4. I find merit in that submission. The Supreme Court in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) has cautioned the courts of the undesirability of the vehicles being exposed to sun and rain and deterioration in the custody of the court. Until the relevant decision is taken as to whether the vehicle is liable for confiscation, I am satisfied that it will be in the interests of all concerned to make appropriate arrangements to prevent damage and deterioration of the vehicle.

5. I am, in these circumstances, satisfied that the impugned order can be set aside and the learned Magistrate can be directed to release the vehicle to the petitioner subject to appropriate conditions, including the condition that the petitioner must execute a bond for the value of the vehicle and

offer bank guarantee for the value of the vehicle. He must also produce the relevant documents to satisfy the learned Magistrate that he is the owner entitled to the possession of the vehicle.

6. In the result:

(a) This Crl.M.C. is allowed.

(b) The impugned order is set aside.

(c) The learned Magistrate is directed to dispose of the petition afresh.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge